

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. SPRINT COMMUNICATIONS COMPANY, L.P., Respondent.	DOCKET NO. FCU-04-3
---	---------------------

PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued February 25, 2004)

Background

On December 9, 2003, Mr. Charles Evans filed a written complaint with the Utilities Board (Board) stating that he was induced to switch his local and long distance telephone service from Qwest Corporation (Qwest) to Sprint Communications Company, L.P. (Sprint) by a telemarketer who told him the rates he would be charged by Sprint would be the same for his two home lines as he was charged by Qwest, or maybe less since he had wireless service with Sprint. Mr. Evans stated Sprint also told him Sprint service would start after Qwest service was finished. Mr. Evans further stated that Sprint then charged him \$89.79 for one line when he had just paid Qwest \$56.98 for his two-line service. Mr. Evans stated

that he had been lied to by Sprint and misled when they said they would provide the same service at the same price after Qwest was finished, but they billed him for the same period at a higher rate for only one line instead of two as agreed. He stated he did not want to pay both companies and since Sprint lied to him, he did not want them at all.

The details of the complaint are contained in informal complaint file number C-03-261, which is incorporated into the record in this case pursuant to 199 IAC 6.7.

Upon receiving the complaint, Board staff attempted to informally resolve the dispute. On December 9, 2003, Board staff forwarded the complaint to Sprint and to Qwest for response. Qwest responded by letter filed December 29, 2003. Qwest stated that Mr. Evans had two lines with Qwest, and on November 3, 2003, Qwest received a request from Sprint to change one of the lines to Sprint. Qwest stated it made the change and continued to bill Mr. Evans for the remaining line.

Sprint responded by letter filed December 31, 2003, and stated that it had contacted Mr. Evans and worked out a resolution to his satisfaction. Sprint stated it issued a full credit to Mr. Evan's long distance account in the amount of \$126.37, that the account reflected a zero balance, and that Mr. Evans told Sprint he was changing his service from Sprint to another carrier. Sprint further stated that Mr. Evans was going to contact the Board to withdraw his complaint, and requested the Board to find Sprint's resolution satisfactory and close the file. Sprint further stated the Board did not have jurisdiction over Sprint's rates and charges, that it made Mr. Evans whole by

bringing the account to a zero balance, and that by doing so, it was not acknowledging any wrongdoing, but merely resolving the complaint.

On January 6, 2004, Board staff issued a proposed resolution summarizing what had occurred, describing a telephone conversation on December 30, 2003, in which Mr. Evans stated he was satisfied with the credit from Sprint and wanted to withdraw his complaint, and closing the matter at Mr. Evans' request.

On January 20, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) petitioned the Board to commence an administrative proceeding to consider a civil penalty for a slamming violation. The Consumer Advocate stated that Sprint's response neither acknowledged nor responded to Mr. Evans' allegation that Sprint lied to him about rates. The Consumer Advocate further stated the proposed resolution was correct as far as it went. However, the Consumer Advocate stated, there are both a private interest in settling the account between Sprint and Mr. Evans and a public interest in ridding the market of fraud. The Consumer Advocate argued the proposed resolution protected the first interest but not the second. The Consumer Advocate asserted the Board has ample jurisdiction to address Mr. Evans' allegations, that Sprint's misrepresentation that its rates were competitive or more than competitive with Qwest's was erroneous, material, and worked a fraud upon Mr. Evans. The Consumer Advocate argued that the fraud vitiated any authorization for the switch, and without a valid authorization, the switch was an unlawful slam. The Consumer Advocate argued the Board should

impose a civil penalty because crediting the account would not by itself stop the fraudulent practice. The Consumer Advocate argued the Board should consider any history of violations in determining the amount of the penalty, and cited 12 informal complaint files it believed the Board should consider when imposing a civil penalty.

On February 4, 2004, Sprint filed a response to the Consumer Advocate's petition.¹ Sprint stated that although the Consumer Advocate alleges Sprint defrauded Mr. Evans, causing him to switch to Sprint, thus slamming Mr. Evans, the Consumer Advocate has never disputed that Mr. Evans authorized Sprint's services or that Sprint properly charged Mr. Evans for the Sprint services for which he signed up. Sprint further stated that Mr. Evans signed up for a Sprint product that provided unlimited local and long distance services in addition to Caller ID, voice mail, and call waiting for \$55.99 per month. Sprint further stated it is unclear if the Qwest rate for two lines is for services similar to Sprint's product. Therefore, Sprint argues, it is difficult to determine whether Sprint's product was actually higher than Qwest's, given the long distance and custom calling features included. Sprint stated that Mr. Evans' first bill included charges for service provided from November 3 to November 17 plus one month billed in advance for a total of \$85.79. Sprint also stated it received a call from Mr. Evans on December 1, 2003², a supervisor explained Sprint's products and associated costs, and the supervisor issued a \$30 credit toward Mr. Evans' billing

¹ On page two of the response, Sprint stated Mr. Evans subscribed on March 3, 2003. This date is an error. In the stipulation or prepared testimony, Sprint should provide the correct date.

² It is unclear whether Sprint is alleging this was the marketing call that induced Mr. Evans to switch to Sprint, or another call. Sprint must clarify this in the stipulation or prepared testimony.

charges. Sprint argued that there was obviously a misunderstanding between Sprint and Mr. Evans, but such misunderstanding was neither misrepresentation of rates nor fraud. Sprint denied that it lied to Mr. Evans. Furthermore, Sprint stated, upon receipt of Mr. Evans' complaint from the Board, it worked out a resolution to Mr. Evans' satisfaction that included issuance of a full credit of \$126.37. It asserted the resolution is adequate, proper, and sufficient. Sprint stated it also blocked Mr. Evans' telephone number to prevent future billing, and Mr. Evans contacted the Board and withdrew his complaint. It stated that all charges appearing on Mr. Evans' bill were in accordance with Sprint's tariff on file with the Board and in compliance with Sprint's interstate tariff or rates provided on Sprint's website pursuant to Federal Communications Commission (FCC) requirements. It asserted that the Board does not have jurisdiction over interstate and federal matters. Sprint stated it did not provide an unauthorized service change, it has a third-party verification tape, and it should not be subject to a civil penalty under Iowa Code § 476.103. It also argues that its rates and charges were lawful and no action should be brought against Sprint pursuant to Iowa Code § 476.3. It argued it does not have a history of prior violations, it has strong anti-slamming and anti-fraud policies and procedures in place, and it has trained its personnel in such policies and procedures. Sprint requested the Board deny the Consumer Advocate's petition and dismiss the docket.

On February 13, 2004, the Board issued an order finding sufficient information to warrant further investigation, docketing the proceeding, and ordering Sprint to file a

response to the Consumer Advocate's petition. At the time it issued the order, the Board was unaware that Sprint had already filed a response.

On February 20, 2004, the Board issued an order stating Sprint's response adequately responded to the Consumer Advocate's allegations but did not provide new information that altered the Board's initial determination to docket the case, and assigned the case to the undersigned administrative law judge.

Pursuant to Iowa Code §§ 476.3(1) and 476.103(4), and 199 IAC 6.5, a procedural schedule will be established and a hearing regarding this complaint will be held if needed.

The statutes and rules involved in this case include Iowa Code §§ 476.3 and 476.103 and Board rules at 199 IAC 1.8, 22.23, and Chapters 6 and 7. A link to the Board's administrative rules (in the Iowa Administrative Code (IAC)) is contained on the Board's website at www.state.ia.us/iub.

The issues

The issues in this case generally involve the change of Mr. Evans's local and long distance telephone service to Sprint, whether Sprint complied with state and federal law when it changed Mr. Evans's service and subsequently billed him, whether Sprint's marketer lied to Mr. Evans, whether imposition of a civil penalty is appropriate, and what should be done to resolve the case. Other issues may be raised by the parties prior to and during the hearing.

Prepared testimony and exhibits

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision that will be issued in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3).

Party status and communication with the Board

The Consumer Advocate and Sprint are currently the parties to this proceeding. If Mr. Evans wishes to be a party to this case, he must notify the Board in writing in accordance with the procedural schedule established in this order.

Each party must file an appearance identifying one person upon whom the Board and the other parties may serve all orders, correspondence, or other documents. 199 IAC 7.2. The written appearance must substantially comply with 199 IAC 2.2(15). The appearance must include the docket number of this case as stated in the caption above. Appearances must be filed at the earliest practical time with the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The appearance must be accompanied by a certificate of service that conforms to 199 IAC 2.2 and verifies that a copy of the document was served upon the other parties.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of the communication should also be sent at the same time to each of the other parties to this proceeding except that three copies must be served on the Consumer Advocate. 199 IAC 1.8(4)"c." These requirements apply, for example, to the filing of an appearance or to the filing of prepared testimony and exhibits with the Board.

Ex parte communication is prohibited as provided in Iowa Code § 17A.17. Parties or their representatives and presiding officers shall not communicate directly or indirectly in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The undersigned administrative law judge is the presiding officer in this case.

Pursuant to 199 IAC 6.7, the written complaint and all supplemental information from the informal complaint proceedings, identified as Docket No. C-03-261, are part of the record of this formal complaint proceeding.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records and Information Center at (515) 281-5563. There will be a charge to cover the cost of the copying. Board orders are available on the Board's website at www.state.ia.us/iub.

All parties should examine Iowa Code §§ 476.3, 476.103, and Board rules at 199 IAC 1.8 and 22.23, and Chapters 6 and 7, for substantive and procedural rules that apply to this case.

Stipulation of Facts and Prehearing Brief

The facts underlying this case have already been the subject of an informal complaint proceeding. Therefore, it is appropriate that the parties file a stipulation of facts, so that only facts in dispute need be resolved in this formal complaint proceeding. In addition, it is appropriate that the parties file prehearing briefs that identify and discuss their respective positions. Finally, the parties must discuss whether it is possible to settle this case without further formal proceedings and the involvement of the undersigned administrative law judge.

IT IS THEREFORE ORDERED:

1. If the parties are unable to settle this case, on or before March 17, 2004, the parties must file a document stipulating to as many of the facts in this case as possible. The stipulation must also identify which facts remain in dispute and need to be resolved. The parties must also state whether they believe a hearing is necessary in this case, or whether the case could be submitted on the stipulated facts, prefiled testimony and evidence, and the prehearing briefs. If Mr. Evans wishes to become a party to this case, he must file written notice with the Board no later than March 17, 2004, and must join in the stipulation of the parties.

2. If the parties are unable to stipulate to all the facts of this case, prefiled testimony and exhibits must be filed only with respect to the facts that remain in dispute and need to be resolved in this proceeding.

3. If needed pursuant to paragraph two, on or before March 31, 2004, the Consumer Advocate and any intervenors must file prepared direct testimony and exhibits and a prehearing brief. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, the Consumer Advocate must address the issues discussed above, support each of the allegations made in its petition, and file any other evidence not previously filed. The Consumer Advocate should use exhibit numbers one and following. In its prehearing brief, the Consumer Advocate must

state what actions it believes would be necessary to bring this matter to a proper resolution, and why such actions would be appropriate and in accordance with applicable law.

4. If needed pursuant to paragraph two, on or before April 14, 2004, Sprint must file prepared testimony and exhibits and a prehearing brief. Sprint may refer to any document in the record, and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits, Sprint must address the issues discussed above, support each of the allegations made in its response, and file any other evidence not previously filed. Sprint should use exhibit numbers 100 and following. In its prehearing brief, Sprint must state what actions it believes would be necessary to bring this matter to a proper resolution, and why such actions would be appropriate and in accordance with applicable law.

5. If the Consumer Advocate or any intervenor is going to file prepared rebuttal testimony and exhibits, it must do so by April 21, 2004.

6. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on Thursday, April 29, 2004, commencing at 10 a.m. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should

contact the Utilities Board at 1-515-281-5256 no later than Friday, April 23, 2004, to request that appropriate arrangements be made.

7. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

8. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.2(7). The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.2(8).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 25th day of February, 2004.